SERVED: January 24, 2006

NTSB Order No. EA-5206

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of January, 2006

MARION C. BLAKEY, Administrator, Federal Aviation Administration, Complainant, v. MATTHEW J. HOPKINS, Respondent.	Docket CP-136

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on December 7, 2004, following an evidentiary hearing.[1] The law judge found that respondent had violated 14 C.F.R. §§ 61.3(a)(1), 91.13(a)(1), and 91.203(a)(1) and (2) of the Federal Aviation Regulations.[2] The law judge dismissed the alleged violation of

[1] The initial decision, an excerpt from the transcript, is attached.

[2] Section 61.3(a)(1) requires a current pilot certificate to
(continued…)

14 C.F.R. § 61.3(c)(1) and reduced to $1,500 the civil penalty of $2,500 sought by the Administrator (changes the Administrator has not challenged). We deny the appeal.

The basic facts were admitted. On August 27, 2003, respondent was piloting a 2-passenger Parasender II (called a "powered parachute" by respondent) when some part of the vehicle hit a power line[3] and landed in a soybean field. There was minor damage to the soybeans, and the power company spent over $3,000 in equipment and labor investigating the effect of the strike and the safety of the line. The facts conclusively establish a violation of § 91.13(a)(1), and respondent has not appealed that finding.

Whether the other violations affirmed by the law judge are established depends on one question: was the vehicle an ultralight governed by 14 C.F.R. Part 103, in which case the regulations cited by the Administrator do not apply and there would be no regulatory violations,[4] or was the vehicle subject to Part 91. If the latter, the violations are clearly proven, as respondent admitted that the aircraft had no airworthiness or

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(continued…)
operate civil aircraft. Section 91.13(a)(1) prohibits careless or reckless operations that endanger or could endanger the life or property of another. Sections 91.203(a)(1) and (c)(1) require airworthiness and registration certificates for the lawful operation of civil aircraft.

[3] Scorch marks were found on brackets on the vehicle, but respondent stated that it was the parachute that hit the power line.

[4] See transcript at 98.

registration certificate, and that he had no airman or medical certificate, all of which would have been required.

The law judge found in favor of the Administrator. He rejected respondent's claim that the vehicle was an ultralight as defined in Part 103 and instead found that Part 91 did apply. On appeal, respondent raises only this issue, and we again reject his argument.

The critical question under Part 103 is whether the aircraft qualifies under Part 103.1(a). That rule provides, in part, that:

> For the purposes of this part, an ultralight vehicle is a vehicle that:
>
> (a) Is used or intended to be used for manned operation in the air by a single occupant[.]

Respondent alleges that the Parasender II was lawfully operated in accordance with Part 103. Respondent argues that, despite the 2-seat configuration, the vehicle was being used by a single occupant, and that this is a reasonable and logical reading of the rule. Regardless of whether or not that may be so, it is not the Administrator's interpretation. The Administrator reads the provision to cover a vehicle that permits, by virtue of its design, carriage of only one person. That is a reasonable interpretation to which we are bound. 49 U.S.C. § 44709(d)(3) (FAA Civil Penalty Administrative Assessment Act of 1992, P.L. No. 102-345).

Respondent also may not rely solely on this one rule, when there exist other statements of the Administrator's intent to

which respondent is bound. Counsel for the Administrator introduced Advisory Circular (AC) 103-7. This AC states specifically that, "[a]n ultralight cannot be operated under Part 103 if there is more than one occupant or **if it has provisions for more than one occupant.**" AC 103-7, paragraph 12a, emphasis added. There can be no rebuttal when respondent's vehicle had two seats. Respondent does not argue that he should not be held accountable when he had no knowledge of the advisory circular, and such an argument could not succeed. Respondent was obliged to know the conditions under which he lawfully could operate the vehicle. Further, as counsel for the Administrator notes, it is not difficult to learn the necessary information as it is available not only from the FAA but also from a number of organizations involved with the operation of ultralights.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. Respondent is required to forward $1,500 to the FAA at the address provided in the Administrator's Order of Assessment dated April 29, 2004, within 30 days after the service date indicated on this opinion and order.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.